85-320

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

GEORGE PAPPANIKOLAOU, Petitioner, Pro Se,

v.

ADMINISTRATOR OF THE VA, Respondant

On Writ of Certiorari to the U.S. Court of Appeals for the Second Circuit.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

With respect to law 38 USC 211, which pertains to the protection given to discretionary Veterans Administration (VA) decisions "under any law administered by the VA" pertaining to VA benefits, in that said VA decisions are considered final and not reviewable in Court; and the general question of a recent Court of Appeals for the Second Circuit decision, which so broadly redefines, and overextends said protection, that it deprives Veterans of their long-standing rights to the following:

(1) Does law 38 USC 211 allow the VA to deprive disabled Veterans of ministerial duties found in USC and CFR, Titles 38; by total nonfeasance; and the protection given to awarded benefits that have been in effect for 20 years, under law 38 CFR 3.951, in that said benefits are considered permanent and protected, and cannot be revoked by the VA; whereby a disabled Veteran can be retroactively deprived of all compensation for a previously

awarded benefit of 100% disabled, that has been in effect for 29 years?

(2) Does law 38 USC 211 apply to any question of law or fact, on any matter involving the VA, even under laws not administered by the VA or pertaining to Veterans' benefits; whereby unsubstantiated allegations by the VA in Court must be given more weight than the uncontested evidence of record; in that Judge Bramwell was justified in dismissing Plaintiff's original case against the VA, for lack of a Tort Claim, based only on a VA affidavit so alleging, with said Judge being well aware that Plaintiff actually filed a Tort Claim, with a copy of same and a ten month old Proof of Service in the record?

(3) Does law 38 USC 211 deprive disabled Veterans, who file claims for compensation and damages in Court against the VA, of their Constitutional right to Due Process, guaranteed by Amendment V; whereby the VA is allowed to depose Veterans and copy all their documents; while Veterans are not allowed to

depose anyone from the VA on any subject; not allowed certified complete copies of, or access to, their VA files; have almost all of their written and oral motions ignored; and are cut off by the Judge, when they try to speak in Court?

(4) Does law 38 USC 211 exempt the VA from complience with all the provisions of the Freedom of Information Act, and the Privacy Act of 1974, 5 USC 552 and 5 USC 552a respectively; whereby, the VA can completely ignore all requests made by Veterans under said acts, for access to their VA files and certified complete copies of same; pertinent information; adjudication of properly filed claims for a change of record; and further, intentionally destroy records from a Veteran's VA file, as the VA admitted doing, inorder to weaken a Veteran's claim for benefits, or weaken a Veteran's case against the VA in Court, and deprive Veterans of compensation for previously awarded benefits and damages?

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1. AMENDMENT V, of the Constitution.

Pages 2, 23, and 35.

2. FREEDOM OF INFORMATION ACT, 5 USC 552.

Pages 3, 23, 26, 27, 29, 30, 34, and 40.

3. PRIVACY ACT OF 1974, 5 USC 552a.

Pages 3, 23, 26, 27, 29, 30, 34, and 40.

4. 38 CFR 3.103a, Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

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5. 38 CFR 3.951, Preservation of disability ratings.

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6. 38 CFR 4.25, Combined ratings table,

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JURISDICTION OF THE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner, George Pappanikolaou, pro se, most respectfully prays that a Writ of Certiorari issue to review the judgement of the U.S. Court of Appeals for the Second Circuit entered on May 6, 1985, with a petition for a rehearing of same denied on June 13, 1985, and a petition for an explination of the decision being ignored; docket no. 84-6315.

The jurisdiction of this Court is invoked under 28 USC 1254.

District Court decision.....42

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38 USC 211. Decisions by Administrator; opinions of Attorney General

(a) On and after October 17, 1940, except as provided in sections 775, 784, and as to matters arising under chapter 37 of this title, the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependants or suvivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise. (Amended P.L.89-214,1(b); 89-358,4(h); P.L. 91-376,8(a).)

(b) The Administrator may require the opinion of the Attorney General on any question of law arising in the administration of the Veterans' Administration.

38 CFR 3.951 Preservation of disability ratings.

A disability which has been continuously rated at or above any evaluation of disability

for 20 or more years for compensation purposes under laws administered by the Veterans Administration will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation. (38 U.S.C. 110; Pub. L. 91-32)(34 FR 11970, July 16, 1969)

AMENDMENT V OF THE CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal

case to be a witness against hinself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for Public use, without just compensation.

38 CFR 3.103 Due Process-procedural and appellate rights with regard to disability and death benefits and related relief.

(a) STATEMENT OF POLICY. Proceedings before the Veterans Administration are ex parte in nature. It is the obligation of the Veterans administration to assist a claimant in developing the facts pertinent to his claim and to render a decision which grants him every benefit that can be supported in law while protecting the interests of the Government. This priciple and the other provisions of this section apply to all claims for benefits and relief and decisions thereon within the purview of this part. ETC.

38 CFR 4.25 Combined Ratings Table.

Table 1. Combined Ratings Table, results from the consideration of the efficiency of the

individual as effected first by the most disabling condition, then by the less disabling condition, then by any less disabling conditions, if any, in the order of severity. Thus a person having a 60% disability is considered 40% efficient. Proceeding from this 40% efficiency, the effect of a further 30% disability is to leave only 70% of the efficiency remaining after consideration of the first disability, or 28% efficiency alltogether. The individual is thus 72% disabled, as shown in table 1 opposite 60% and under 30%. ETC.•This law is used in combination with law•38 CFR 4.16 Total disability ratings for compensation based on unemployability of the individual. (a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgement of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: PROVIDED THAT, if there is only one such disability, this disability shall be

ratable at 60% or more, and that if there are two or more disabilities, there shall be at least one disability ratable at 40% or more, and sufficient additional disability to bring the combined rating to 70% or more.

5 USC 552 and 5 USC 552a; The Freedom of Information Act, and the Privacy Act of 1974; respectively.

NOTE: The following is quoted from the Union Calander No. 412, House Report No. 95-793, of the 95th Congress, 1st Session, entitled: A citizen's guide on how to use the Freedom of Information Act and the Privacy Act in Requesting Government Documents,Thirteenth Report by the Committee on Government Operations.

Under "Taking your case to Court", Page 28; "Under the Privacy Act, you can sue an agency for refusing to release your records, for denial of your appeal to amend a record, and for failure to act upon your appeal within the designated time. You can also sue if you are adversely affected by the agency's failure to comply with any of the provisions of the act!"

"Judicial ruling favorable to you could result in the release or amendment of the records in question. In addition, you can obtain money damages if it is proven that you have been adversely affected as a result of the agency's intentional and willful disregard of the act's provisions. You might also be awarded court costs and attorney's fees."

Page 2, INTRODUCTION, 4th paragraph;"More specifically, the Privacy Act allows an individual to review almost all Federal files pertaining to himself. It requires that these files be accurate, complete, relevant, and up-to-date, and allows the subjects of the files to challange the accuracy of the information contained in them"!

5 USC 552a(e) AGENCY REQUIREMENTS.— Each agency that maintains a system of records shall-

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual

in the determination;

5 USC 552a(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt; and

(B) promptly, either—(i) make any correction of any portion thereof which the individual believes is not accurate, relevant,

timely, or complete; or (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of the agency to amend his record to request a review of such refusal,and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the

agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

5 USC 552a(g)—(1) CIVIL REMEDIES.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C)fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other

provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,--- the individual may bring a civil action against the agency, and the District Courts of the United Sates shall have jurisdiction in the matters under the provisions of this subsection.

(2) —

(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United Sates reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) —

(A) In any suit brought under the provisions of subsection (g)(1)(B) of this

section, the court may enjoin the agency from withholding the records and order the production to the complaintant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth on subsection (k) of this section, and the burden is on the agency to sustain its actions.

(B) The court may assess against the United Sates reasonable attorne, fees and other litigation costs reasonably incurred in any case under this paragraph in which the complaintant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United Sates shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of this section together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complaintant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where any agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of liability of the agency to the individual under

this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

STATEMENT OF THE CASE

It must be clearly understood, that as proven by uncontested VA evidence of record, Plaintiff was previously awarded disability benefits, including a disability rating of 100%, the maximum possible; as of the day he was seperated from service, June 8, 1956, the earliest date possible; and is seeking to obtain compensation for same, which the VA has continually refused to provide Plaintiff with, by use of a "COVERUP" with total nonfeasance. Plaintiff is not seeking additional benefits by trying to overturn unfavorable VA decisions, as the VA unsubstantially alleges; and the Courts have accepted as fact; for even if by some miracle, he was able to overturn an unfavorable VA decision, he would not be entitled to any more compensation, or anything else. Plaintiff also seeks damages because of the VA "COVERUP".

Three letters to Plaintiff from the VA, in the record; dated May 28, June 2, and June 12, 1958, clearly prove that, effective June 9, 1956; Plaintiff had been awarded an "unusually

large" total disability benefit rating of "180%" for: (1) Psychosis, (2) Tension Headaches, (3) Sinusitis Headaches, and (4) Left knee; which equals a raw combined rating of 93.25% under 38 CFR 4.25. Based on this, a finding was made that Plaintiff was to have been considered "Totally disabled".

The VA, at the time, even refused to allow the Plaintiff to continue college under the GI Bill as an engineering student, because he had been found to be Psychotic by the VA.

The last letter Plaintiff received from the VA, dated June 12, 1958, informing him of his awards; stated at the end: "No further action is required on your part, until notified by the Veterans Administration.".

Since June 9, 1956, Plaintiff has only received compensation for the awarded benefit of 10% for the left knee condition; and in 1979, was awarded an additional 10% benefit; and now receives compensation for benefits totaling 20%, instead of the 100%, that was previously awarded to him.

As time passed without proper compensation, Plaintiff wrote numerous letters to the VA, all of which were ignored; made numerous visits to the New York Regional Office (NYRO) of the VA, which eventually realized that a mistake had been made. However, instead of properly compensating the Plaintiff, the NYRO chose to perpetrate a "COVERUP" to hide said mistake, and deprive Plaintiff of compensation for his previously awarded benefits; by nonfeasance.

Congressional letters from the offices of Honorable Senators Moynihan and D'Amato, and former Congressman Zeferitti, were politely acknowledged, and ignored. The Disabled American Veterans couldn't obtain access to Plaintiff's complete VA file; persuade the VA to perform ministerial duties; or acknowledge, let alone consider, the uncontested VA evidence of record that proved Plaintiff had been previously awarded benefits that he wasn't receiving compensation for. Plaintiff tried to bring the evidence to the VA's attention, by filing claims for the same benefits that were

previously awarded to him, but the VA ignored the claims. Plaintiff tried to use the Privacy Act of 1974, 5 USC 552a(g), to have the records changed to show all the awarded bebefits, which the VA, also ignored.

Plaintiff filed a Tort Claim against the Administrator of the VA in Washington; with the Proof of Service proving it was received May 4, 1981; and ignored. On February 16, 1982, the Plaintiff went into Court, asking for proper compensation for the previously awarded benefits, and damages for the VA "COVERUP" with said Tort Claim and 10 month old Proof of Service in the record; CV 82-0395; citing Federal Jurisdiction, based generally on the Fifth Amendment to the Constitution; and in particular, USC and CFR, Titles 38; and the Freedom and Privacy of Information Acts, 5 USC 552 and 5 USC 552a respectively. The VA filed an affidavit that Plaintiff had not filed a Tort Claim; motioning for dismissal. Judge Bramwell, who was well aware that Plaintiff had, indeed, filed a Tort Claim, with it and

the Proof of Service being in the record, and even refused to accept additional copies of same at the Hearing; dismissed the case because Plaintiff had allegedly not filed a Tort Claim, based only on the VA affidavit.

Obviously, in a normal situation, Plaintiff's Tort Claim and Proof of Service in the record would have been sufficient to overcome any allegation to the contrary. However, Judge Bramwell, as confirmed by the Court of Appeals, broadly redefined the protection given to the VA under law 38 USC 211 and overextended it to protect the obviously untrue VA affidavit from Court review.

Plaintiff refiled the identical Court case as CV 82-3241 on October 26, 1982. The VA filed an affidavit that since 6 months had not passed since Plaintiff had filed his Tort Claim, the case was premature and should be dismissed. Judge Bramwell, who was still well aware of the original Tort Claim and 1½ year old Proof of Service again in the record, delayed the case for 6 months, based only on the VA affidavit,

once more proving that law 38 USC 211 was being used to protect the second, obviously untrue VA affidavit from Court review.

No doubt, had the VA filed another affidavit that Plaintiff had not filed a Tort Claim, Judge Bramwell would have also dismissed the second case, for lack of a Tort Claim.

After 6 months passed, Judge Bramwell ordered Plaintiff to be deposed by the VA; to produce all documents in his possession, and allow the VA to copy same; but did not allow Plaintiff to depose anyone from the VA on any subject; access to his VA file, or a certified complete copy of same, as requested by Plaintiff in Court; proving that law 38 USC 211 was being used to deprive Plaintiff of his right to Due Process of Law in Court. As shown by the record, Judge Bramwell ignored almost all of Plaintiff's oral and written motions; kept cutting Plaintiff off when he tried to speak in Court; and accepted as fact, all unsubstantiated allegations by the VA, even though he was well aware that they were not true.

When Plaintiff found that his claims under the Freedom and Privacy of Information Acts, (FOIA/POIA), were being ignored by the Court, he filed a seperate case as CV 83-3687, on August 22, 1983, citing said acts as a basis for Federal Jurisdiction. The Burden of Proof normally would have been on the VA to disprove all of Plaintiff's allegations, but Judge Bramwell decided that law 38 USC 211 exempted the VA from complience with FOIA/POIA. In Court, the VA ignored the issue of the numerous unadjudicated requests for changes of record, and gave unsubstantiated allegations as to why Plaintiff's VA file may not be complete, as follows:

(1) The VA alleged that they had not lost Plaintiff's missing records, but that said records were destroyed in the July 12, 1973 fire at the Records Center. Judge Bramwell accepted as fact, the VA allegation that Plaintiff had been discharged from service on his seperation date of June 9, 1956, instead of the actual date of May 31, 1962 found on the

Plaintiff's "Honorable Discharge"; because records of servicemen discharged on June 9, 1956 were destroyed in said fire, while records of servicemen discharged on Plaintiff's actual discharge date of May 31, 1962, were not.

(2) The VA admitted that they had routinely destroyed records from Plaintiff's VA file; VA answer CV 83-3687-7, Page 4, No. 13 (XIII); but decided that this was proper, as did Judge Bramwell, and not in violation of FOIA/POIA, 5 USC 552a(e)5.

(3) Judge Bramwell decided in Court that the evidence Plaintiff proved was missing by presenting more than 200 pages of same at his deposition, was not actually missing, because the VA copied all of it, put it back in the file, and ignored it. Judge Bramwell ignored the list of at least 100 missing pages of important documents that Plaintiff did not have copies of, but could prove existed by their being mentioned in existing VA documents.

If there is any doubt that Judge Bramwell

decided that law 38 USC 211 protected all unsustantiated VA allegations from Court review, as confirmed by the Court of Appeals, then the following example should erase any doubt.

A VA computer code sheet from September 23, 1958, as explained in a VA letter dated November 23, 1982; stated that Plaintiff had been awarded an additional 10% disability benefit, for a "septectomy with rhinitis" (Sinus) condition, which Plaintiff also never received compensation for, and which became permanent on June 9, 1976, under 38 CFR 3.951. In a Court memo of law dated June 15, 1983, CV 82-3241-10, Page 5, line 5, the VA stated: "On June 5, 1958, Plaintiff was awarded an additional 10% rating for a Sinus condition." At a Court Hearing, dated January 16, 1984, CV 83-3687-11, Page 6, Judge Bramwell stated: "On June 5, 1958, however, he was awarded an additional 10% disability for a Sinus condition" which corroborates Plaintiff's claim, the VA

letter, and the VA Court memo of law.

There can be no doubt that Plaintiff was awarded a 10% disability benefit in 1958, that he also never received any compensation for; especially since both the VA and the Court admitted it was true, on their own volition.

It is most respectfully submitted that the only way the above mentioned claim, as well as all the rest of Plaintiff's claims could have been found by the Courts to be "entirely frivolous", is if law 38 USC 211 was broadly redefined and overextended to protect unsubstantiated VA allegations; in that said allegations must be accepted as fact over the uncontested evidence of record, and cannot be reviewed in Court; since both cases were dismissed by Judge Bramwell without Court review, as affirmed by the Court of Appeals.

Further, the VA, which ignored most of Plaintiff's claims, generally denied others, and answered others with unsubstantiated allegations, under FOIA/POIA; could not have possibly satisfied their Burden of Proof by so

doing, therefore, the Courts decided that law 38 USC 211 exempted the VA from complience with FOIA/POIA, and dismissed the cases without a trial.

Judge Bramwell, on March 9, 1984, decided that both cases were ready for trial, and on April 9, 1984, the Plaintiff gave the Judge and the VA a copy of his legal brief. After 3 months passed with no word from the Court, the Plaintiff filed a motion for "Judgement on the Pleadings" which the Court ignored. A refiled identical motion one month later, was also ignored. Two months later, on September 21, 1984, Judge Bramwell dismissed Plaintiff's two year old case, sua sponte, with the only legal explination being that "Mr. Pappanikolaou's claims are entirely frivolous."

After Plaintiff went to check the Court file, he was shocked to find that 983 pages of same were missing, and Judge Bramwell's office informed the Pro Se Clerk that said pages were "lost". After much discussion between the Pro Se and Records Clerks, and the Judge's office,

it was agreed that copies of the missing 983 pages would be put in the file and sent to the Court of Appeals.

Plaintiff filed his Court of Appeals case on October 26, 1984, as docket number 84-6315, and his legal brief on January 11, 1985, which the VA answered on February 19, 1985, by ignoring most of Plaintiff's claims; using unsubstantiated allegations of fact, such as again intentionally using Plaintiff's wrong discharge date to deceive the Court into believing that Plaintiff's records were burned in the Records Center fire, instead of actually having been lost and/or intentionally destroyed by the VA.

The VA further alleged that, by "Ghost" decisions which are not even hinted at in the evidence of record, Plaintiff had somehow been denied all the benefits that the uncontested VA evidence of record showed were awarded him, when, in fact, Plaintiff was awarded benefits, but denied compensation for same, by total nonfeasance. There was also an unsubstantiated

allegation on Page 4, that "In 1979, the Board of Veterans Appeals issued a final written decision disallowing Pappanikolaou's claim for service connected psychosis disability benefits." In answer: (1) Here for the first time ever, the VA admits that a "Service connected psychosis" condition exists; (2) There is not even a hint of such a decision in the record; (3) Such a 23 year after the fact decision in 1979, would be in violation of 38 CFR 3.951, in that said award became final in 1976; and could not be revoked by the VA in 1979; (4) If there somehow was such a legal decision, it could not be retroactive to 1956, and Plaintiff would still be owed compensation for a 100% benefit from 1956 to 1979; (5) Finally, there would still be more than enough of a total disability benefits rating from the 3 remaining conditions, Tension and Sinusitis Headaches, and left knee condition; of 110%, as compared to a minimum of 40 or 60% required for a continued rating of 100% disabled, even

if the 10% benefit for a Sinus condition and other benefits are excluded; and all pending claims for benefits are denied.

The Court of Appeals confirmed the District Court decision of record, on May 6, 1985, mentioning only law 38 USC 211.

Plaintiff was again shocked to find that the 983 pages of evidence that the District Court assured the Plaintiff were sent to the Court of Appeals, were not in the record, and not received by the Court of Appeals, as verified by Mr. Mike Sinski of the Court of Appeals Pro Se Clerk's Office. Everyone at the District Court refuses to talk to Plaintiff about the matter of the missing 983 pages.

If the Court of Appeals had read Plaintiff's brief; which mentioned the 983 pages, and referenced some of them throughout the brief; they must have found that the 983 pages were missing, but did not mention the fact because their decision was based only on a broadly redefined and overextended interpertation of law 38 USC 211, and not on

the true facts of the case, based on the VA uncontested evidence of record; which was found to be completely irrelevant to the case. Obviously, there was still some evidence of record in Plaintiff's brief, including the 3 letters previously mentioned that proved that Plaintiff had been awarded benefits of total disability. The VA never presented any evidence at all to contradict anything.

The Court of Appeals decision was based entirely on the unsubstantiated allegations by the VA, that Plaintiff was somehow trying to change previous VA decisions; that all of Plaintiff's claims were based on VA denial of benefits; and that the VA had not perpetrated a "COVERUP" on the Plaintiff, but were continually negligent and reckless for 29 years. The Freedom and Privacy of Information Acts were completely ignored, proving once more that the Courts felt that law 38 USC 211, exempted the VA from complience therewith.

REASONS FOR GRANTING THIS WRIT

It is most respectfully submitted that the Court of Appeals for the Second Circuit has confirmed a Federal District Court decision, that so far departs and perverts the accepted and usual interpertation of the protection given to VA decisions under law 38 USC 211, that it calls for an exercise of the Supreme Court's power of supervision.

There simply is just no justifiable method that can be used to redefine the clear wording of law 38 USC 211, that the Supreme Court ruled was Constitutional in its normal interpertation which states: "....the decisions of the Administrator on any question of law or fact under any law administered by the VA providing benefits for Veterans and their dependants or suvivors shall be final and conclusive..."; so that Veterans can be deprived in general, of their Constitutional right to Due Process of Law under Amendment V; and in particular:

A. With respect to USC and CFR, Titles 38;

(1) The VA no longer has to follow, or is

bound by the applicable procedural laws and regulations; whereby, for example; the VA's Statement of Policy under law 38 CFR 3.103a; "It is the obligation of the VA to assist a claimant in developing the facts pertinent to his claim and to render a decision which grants him every benefit that can be supported in law while protecting the interests of the Government.", can be ignored.

It is most respectfully submitted that the above law was written, because it is well known that disabled Veterans are very vulnerable and almost helpless after leaving service, and the Plaintiff was no exception. Plaintiff was just out of school when he was drafted into the Army on June 8, 1954, at the age of 18, during the Korean War period. He had only worked for a short while before leaving his job for the Army and had very little money. He was injured a few weeks later, when as a road guard at a road crossing, the ground under him gave way, and he fell about 20 feet through the roof of a dug out tunnel, and landed on his knees on a

stack of metal sewer pipes. This was the beginning of his continual incurable pain conditions with symptoms of constant severe headache pains and nausea. His left knee was operated upon to remove the broken off piece of his left knee cap, while his right leg was put in a cast. He was given a septectomy operation by the Army to cure his sinus and headache pain which we now know today, was useless. Very little was known about pain conditions then, such as Migraine, and Plaintiff was sent to psychiatrists and harassed by the Army. He was Courtsmartialed because he couldn't wear a hat due to his Pain conditions, and was found guilty. It was not known then, that as later diagnosed by the VA, Plaintiff had Trigeminal Cephalagia, which could cause the Plaintiff to pass out, if he wore a hat.

After leaving the Army, Plaintiff, with the help of the family doctor, applied for benefits from the VA, and was found to be 100% disabled by the VA, because of Psychosis; two pain conditions, Tension and Sinusitis

Headaches; and his left knee condition.

However, little did Plaintiff realize then that he would not receive compensation for his awarded benefits, and would spend the next 29 years in a futile effort to obtain the compensation from the VA, who perpetrated a "COVERUP" on the Plaintiff by total nonfeasance.

It is most respectfully submitted that is why disabled Veterans must not be deprived of the protection given to them, in that the VA is obligated to assist Veterans with their claims for disability benefits.

The only possible blame that has been placed on the Plaintiff by others, was that he was foolish when he entered service after he was drafted, and did not flee the Country as others have done, and survived in tact. Plaintiff prays that there will never come a time that he will agree with the above.

(2) The VA can now legally and retroactively deny Veterans benefits and ministerial duties , by nonfeasance; whereby, the VA ignored the Plaintiff's properly filed

claims for benefits, some of which are pending since 1956; and also ignored Plaintiff's refiled claims for benefits previously awarded to him, which Plaintiff filed in the hope of bringing to the VA's attention that he wasn't receiving compensation for previously awarded benefits.

(3) The VA can now legally and retroactively deprive Veterans of protection under the law; whereby, the VA has been allowed to retroactively deny Plaintiff compensation for previously awarded benefits, even though the benefits became final and protected under law 38 CFR 3.951, after 20 years, in 1976; and cannot be revoked by the VA.

B. With respect to an action in Federal Court;

(1) Any unsubstantiated allegation by the VA, which is contrary to the evidence of record on any issue previously reviewable in Court, must now be accepted as fact by said Court, and cannot be reviewed; whereby, the District Court dismissed Plaintiff's original case, based only on an unsubstantiated VA allegation by an

Affidavit that Plaintiff had not filed a Tort Claim, which the Judge accepted as fact, even though he knew said affidavit was false, since there was a copy of the Tort Claim and 10 month old Proof of Service in the record, and even refused to accept additional copies of same, at the Court hearing.

(2) Veterans no longer have the right to Due Process of Law in Court; whereby, the VA was allowed to depose the Plaintiff, but the Plaintiff was not allowed to depose anyone from the VA on any subject; the Plaintiff was ordered by the Court to allow the VA to copy all his evidence, but the Plaintiff was not allowed a certified copy of his VA file, or access to same; the Plaintiff's written and oral motions were almost all ignored by the Court, and the Judge kept cutting him off, when Plaintiff tried to speak in Court.

C. With respect to the Freedom and Privacy of Information Acts;

(1) These Acts no longer apply to the VA; whereby, Veterans can no longer force the VA to

provide them with information and copies of their VA files; prevent the VA from destroying records from VA files, as the VA admitted doing in Court, in order to weaken Veterans' claims for benefits, or destroy a case against the VA in Court; and force the VA to change incorrect records, inorder for disabled Veterans to obtain compensation for benefits.

Finally, it is most respectfully submitted that it can just as reasonably and justifiably argued that law 38 CFR 3.951 should be broadly redefined and overextended to give to Veterans the protection that the Courts gave to the VA, by broadly redefining and overextending the protection of VA decisions under law 38 USC 211.

U.S.DISTRICT COURT-EASTERN DISTRICT OF NEW YORK

GEORGE PAPPANIKOLAOU,PLAINTIFF PRO SE -against-

ADMINISTRATOR OF THE VA, DEFENDANT.

DECISION AND ORDERS OF DISMISSAL

82-CV-3241, 83-CV3687 BRAMWELL, D. J.

By complaints filed on October 26, 1982 and August 22, 1983, respectively, George Pappanikolaou commenced the above-captioned actions pursuant to certain provisions of federal law. It is plain from the files on these matters that Mr. Pappanikolaou has not sought justice, but has abused the Court's time and resources with his sham claims. Examples of his abuse include: (1) his filing of several repetitive and ultimately superfluous motions most of which represent incomprehensible diatribe; (2) his refusal to cooperate with the Court and the United States Attorney's Office for the Eastern District of New York on the general management of his actions; and (3) his refusal to accept the U.S. Attorney's offers to produce the documentation he seeks.

It is well settled that the courts have broad powers to prevent abuses of the judicial process and may dismiss a case sua sponte if it is frivolous, harrassing, or malicious. 1. J. M Moore, Federal Practice 0.60(6) (1977). Since the Court believes that Mr. Pappanikolaou's claims are entirely frivolous, they are both dismissed sua sponte.

The Clerk of the Court is instructed to enter notices of dismissal in these cases.

DATED signed Henry Bramwell, USDJ

Brooklyn, N.Y. September 21st, 1984

U.S.COURT OF APPEALS FOR THE SECOND CIRCUIT-

No. 880, August term 1984,decided May 6, 1985

Submitted: March 28, 1985.Docket No. 84-6315

GEORGE PAPPANIKOLAOU PLAINTIFF-APPELLANT Pro Se against ADMINISTRATOR OF THE VA, DEFENDANT-APPELLEE: Before Feinberg, CHIEF JUDGE, OAKES and WINTER, Circuit Judges.

Appeal from a judgement of the U.S.District Court for the Eastern District of N.Y. (Henry Bramwell, Judge), dismissing Plaintiff's

complaint. Affirmed.

George Pappanikolaou, Brooklyn N.Y. pro se Plaintiff-Appellant. Raymond J. Dearie, U.S. Attorney for the Eastern District of N.Y., Miles M. Tepper, Winstanley F. Luke, Assistant U.S. Attorneys, for Defandant-Appellee.

Per Curiam:

George Pappanikolaou appeals from the dismissal of his pro se complaint against the Administrator of the Veterans Administration ("V.A."). We h ld that Judge Bramwell's dismissal was proper.

Appellant's complaint arises out of various unsuccessful claims he has filed with the VA seeking disability benefits. Read liberally, the complaint seeks damages for a variety of alleged wrongs. To the extent it seeks the benefits which have been claimed and denied, it fails to state a valid claim for relief. An applicant for benefits may not challenge the VA's disposition of his claim, because the Administrator's decisions of law or fact concerning the administration of benefits

are not subject to judicial review. 38 USC 211(a) (1982).

To the extent the complaint seeks damages for the VA's denial of due process in handling his claim, we agree with those circuits that have held that one may not circumvent 38 USC 211(a) by seeking damages on a consitutional claim arising out of a denial of benefits. See Anderson v. VA, 559 F.2d 935 (5th Cir. 1977) (per curiam); Ross v. U.S., 462 F.2d 618 (9th Cir.) (per curiam), cert. denied, 409 U.S. 984 (1972); Miliken v. Gleason, 132 F.2d 122 (1st Cir.) (per curiam) cert. denied, 379 U.S. 1002 (1965).

To the extent the complaint seeks damages for emotional distress resulting from the VA's negligence or recklessness, it fails to state a valid claim under N.Y. Law. See Garland v. Herrin, 724 F.2d 16, 19 (2nd Cir. 1983). Affirmed.

U.S. COURT OF APPEALS for the SECOND CIRCUIT

At a stated term of the U.S. Court of Appeals for the Second Circuit, held at the U.S. Courthouse in the City of New York on June 13, 1985.

PRESENT: HON. WILFRED FEINBERG, CHIEF JUDGE;
HON. JAMES L. OAKES, CIRCUIT JUDGE;
HON. RALPH K. WINTER, CIRCUIT JUDGE

GEORGE PAPPANIKOLAOU, Plaintiff-Appellant, pro se, against Administrator of the VA, Defendant-Appellee No. 84-6315 Stamped as filed on June 13, 1985;

A petition for a rehearing having been filed herein by plaintiff-appellant George Pappanikolaou, pro-se, Upon consideration thereof, it is Ordered that said petition be and it hereby is denied.

signed Elaine B. Goldsmith, Clerk.